

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 120353-001

Blue Cross Blue Shield of Michigan

Respondent

Issued and entered
this _____ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 6, 2011, XXXXX, authorized representative on behalf of her client XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on June 13, 2011.

The Commissioner immediately notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and asked for the information it used to make its adverse determination. The Commissioner received BCBSM's response on June 22, 2011.

The issue in this external review can be decided by a contractual analysis. The contract that defines the Petitioner's health care benefits is BCBSM's *Flexible Blue II Individual Market Certificate* (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's coverage with BCBSM was effective on January 1, 2011. On January 26, 2011, she had an office visit with a physician. BCBSM denied coverage for this office visit stating it occurred during the 180-day waiting period for pre-existing conditions.

The Petitioner appealed BCBSM's denial. BCBSM held a managerial-level conference and then issued a final adverse determination dated May 10, 2011, upholding its denial.

III. ISSUE

Is BCBSM required to cover the Petitioner's January 26, 2011 office visit?

IV. ANALYSIS

BCBSM's Argument

The certificate contains the following provision on page 1.6:

When Your Benefits Begin

Unless noted otherwise, all covered services and benefits are subject to a 180-day waiting period for pre-existing conditions. This 180-day waiting period begins on the first day your coverage becomes effective; **not** on the date your application was submitted. **This 180-day waiting period does not apply to covered members who are less than 19 years of age.**

For members over the age of 19, the 180-day pre-existing condition waiting period will not apply if:

- You have creditable coverage and meet the following:
 - There was no more than a 62-day break in your prior coverage
 - You did not lose your prior coverage because of nonpayment of your premium or for fraud
 - Your most recent coverage was with a group (even if the coverage was only for one day)

In its final adverse determination of May 10, 2011, BCBSM maintained its denial of coverage for the January 26, 2011, office visit because the Petitioner has not provided proof of recent creditable coverage from a group health plan. BCBSM also indicated that the Petitioner was given an opportunity to waive the creditable coverage requirement by submitting information relative to a medical history review, but has not submitted any relative documentation.

BCBSM argues the creditable coverage certificate from Petitioner's most recent health insurance carrier is from an individual health plan instead of a group health plan. BCBSM states the Petitioner and her husband own the business through which they receive health insurance coverage and claim it is a group health plan. BCBSM maintains the Petitioner was afforded the

opportunity to submit proof that she and her husband have at least two additional employees to qualify their health insurance as a group health plan but that they did not submit any supporting documentation.

BCBSM believes that coverage for Petitioner's office visit was appropriately denied.

Petitioner's Argument

The Petitioner states she has at least 18 months of creditable coverage from a former group health plan and therefore the pre-existing condition waiting period should be waived. She wants BCBSM to provide coverage in the amount of \$130.00 for the office visit.

Commissioner's Review

BCBSM has based its denial of coverage on the policy provisions which require waiting a period of 180 days before coverage is provided for the treatment of pre-existing conditions. However, BCBSM has never indicated what pre-existing medical condition the Petitioner had which was treated during her office visit of January 26, 2011. Before the waiting period for pre-existing conditions may be invoked, BCBSM must establish the existence of a pre-existing condition. This, BCBSM has failed to do.

The question of whether the Petitioner had creditable coverage prior to becoming a BCBSM member is not relevant to this case since creditable coverage analysis only pertains to situations involving pre-existing conditions.

In the absence of evidence of a pre-existing condition, the Commissioner finds that BCBSM's denial is not consistent with the terms of the certificate.

V. ORDER

The Commissioner reverses Blue Cross Blue Shield of Michigan's final adverse determination of May 10, 2011. BCBSM shall, within 60 days of the date of this Order, provide coverage for Petitioner's office visit of January 26, 2011. BCBSM shall, within seven (7) days of providing coverage, provide the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner